
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

JEHAN SEMPER,

Plaintiff,

v.

JANET YELLEN, SECRETARY OF THE
TREASURY, et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER OVERRULING PLAINTIFF'S
OBJECTION AND ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION

Case No. 1:22-CV-00070 TS-CMR

District Judge Ted Stewart

This matter comes before the Court on Plaintiff's Objection to the Magistrate Judge's Report and Recommendation regarding Plaintiff's Motion for Summary Judgment and Defendant's Motion to Dismiss.

On May 23, 2022, Plaintiff filed her initial Complaint. This case was subsequently referred to the Magistrate Judge under 28 U.S.C. § 636(b)(1)(B). Plaintiff filed a Third Amended Complaint on June 8, 2022. On January 31, 2023, Defendant filed a motion to dismiss. Thereafter, on February 6, 2023, Plaintiff filed a motion for summary judgment. The Magistrate Judge issued a Report and Recommendation recommending that the Court deny the motion for summary judgment and grant the motion to dismiss. Plaintiff filed a timely objection.

I. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b), a party has 14 days after service to object to a Report and Recommendation. Plaintiff filed a timely objection to the Magistrate Judge's Report and Recommendation. The Court therefore reviews the Report and Recommendation de novo.¹

¹ 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

In order to conduct a de novo review a court “should make an independent determination of the issues . . . ; [it] ‘is not to give any special weight to the [prior] determination’” “The district judge is free to follow [a magistrate judge’s recommendation] or wholly to ignore it, or, if he is not satisfied, he may conduct the review in whole or in part anew.”²

II. DISCUSSION

Plaintiff seeks summary judgment on her claim for injunctive relief enforcing the March 14, 2022, IRS’s Office of Civil Rights and Diversity’s (“OCD”) Final Agency Decision (“FAD”). The Magistrate Judge recommends that the motion for summary judgment be denied (1) because it failed to comply with Rule 56 and Local Rule 56-1, and (2) because the motion is premature.

Defendant moves for dismissal of the IRS, ORCD, and TIGTA employees as defendants in this case. The Magistrate Judge recommends that the motion to dismiss be granted (1) because the proper defendant is Secretary Yellen in her official capacity as the Secretary of the Treasury, and (2) because the applicable criminal statute does not provide a private cause of action.

The Court has considered the filings, the Report and Recommendation, and the Plaintiff’s Objection. Having done so, the Court will adopt the Magistrate Judge’s Report and Recommendation and overrule Plaintiff’s Objection.

III. CONCLUSION

It is therefore

ORDERED that Plaintiff’s Objection (Docket No. 123) is OVERRULED. It is further

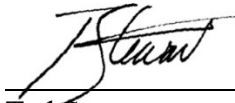
ORDERED that the Magistrate Judge’s Report and Recommendation (Docket No. 122) is

ADOPTED IN FULL.

² *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. First City Nat’l Bank*, 386 U.S. 361, 368, (1967); *Mathews v. Weber*, 423 U.S. 261, 271 (1976)).

DATED this 29th day of August, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

Ted Stewart
United States District Judge